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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DERICK LEIGHTON SOWELL,

Defendant and Appellant.

H042837

(Santa Clara County

Super. Ct. No. C1363734)

Defendant Derick Leighton Sowell appeals from an order granting his petition for resentencing pursuant to Proposition 47. He contends that Health and Safety Code section 11590¹ violates his right to equal protection, because it provides that any violation of section 11350 requires narcotics offender registration while only a felony violation of section 11377 requires such registration. (§ 11590, subds. (a) & (c).) The order is affirmed.

I. Statement of the Case

In May 2014, defendant pleaded no contest to felony possession of a nunchaku (Pen. Code, § 22010), felony possession of hydrocodone (§ 11350, subd. (a)), and

¹ All further statutory references are to the Health and Safety Code unless otherwise stated.

misdemeanor driving with a suspended license (Veh. Code, § 14601.1, subd. (a)). The trial court reduced the felony possession of a nunchaku to a misdemeanor, suspended imposition of sentence, and placed defendant on probation for three years. The trial court later granted defendant's petition to reduce the felony possession of hydrocodone to a misdemeanor pursuant to Proposition 47 (Pen. Code, § 1170.18, subd. (a)). The trial court suspended imposition of sentence, placed defendant on probation for two years, and ordered that he register as a narcotics offender.

II. Discussion

In November 2014, Proposition 47 went into effect. (Cal. Const., art. II, § 10, subd. (a).) Proposition 47 reclassified certain felony and wobbler theft-related and drug-related offenses as misdemeanors unless the offenses were committed by certain ineligible defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reclassified both possession of a controlled substance (§ 11350), which had been a felony, and possession of a nonnarcotic controlled substance (§ 11377), which had been a wobbler, as misdemeanors, except as to certain defendants. (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, §§ 11, 13.) Offenses involving substances that were previously classified as narcotics generally appear in section 11350 et seq., while offenses involving substances previously classified as restricted dangerous drugs generally appear in section 11377 et seq. (See 2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 87, 88, pp. 730, 732.) However, Proposition 47 did not affect the statutes governing narcotics offender registration. Pursuant to section 11590, any violation of section 11350

requires narcotics offender registration, while only a felony violation of section 11377 requires registration. (§ 11590, subds. (a) & (c).)²

““The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.”’ [Citation.] ‘The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.’ [Citations.] This initial inquiry is not whether persons are similarly situated for all purposes, but ‘whether they are similarly situated for purposes of the law challenged.’ [Citation.]” (Cooley v. Superior Court (2002) 29 Cal.4th 228, 253.)

Defendant argues that those convicted of a misdemeanor violation of section 11350, subdivision (a) and those convicted of a misdemeanor violation of section 11377, subdivision (a) are similarly situated for purposes of equal protection analysis. The Attorney General points out that hydrocodone is not one of the stimulants, hallucinogens, and nonnarcotic Schedule III, IV, and V substances prohibited by section 11377, subdivision (a). Thus, she argues that defendant, who was convicted of possession of hydrocodone in violation of section 11350, subdivision (a), is not similarly situated to defendants who possess different drugs, and therefore commit different crimes. Even assuming that defendant is correct that these two groups of offenders are similarly situated, we find no equal protection violation.

² Section 11590 provides in relevant part: “(a) . . . any person who is convicted in the State of California of any offense defined in Section 11350 . . . shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area. [¶] . . . [¶] . . . (c) This section does not apply to a conviction of a misdemeanor under Section . . . 11377”

“Where, as here, a statute involves neither a suspect class nor a fundamental right, it need only meet minimum equal protection standards, and survive ‘rational basis review.’ [Citation.]” (*People v. Turnage* (2012) 55 Cal.4th 62, 74.) “[E]qual protection of the law is denied only where there is no ‘rational relationship between the disparity of treatment and some legitimate governmental purpose.’ [Citation.] In other words, the legislation survives constitutional scrutiny as long as there is “any reasonably conceivable state of facts that could provide a rational basis for the classification.”’ [Citation.] This standard of rationality does not depend upon whether lawmakers ever actually articulated the purpose they sought to achieve. Nor must the underlying rationale be empirically substantiated. [Citation.] While the realities of the subject matter cannot be completely ignored [citation], a court may engage in “‘rational speculation”’ as to the justifications for the legislative choice. [Citation.] It is immaterial for rational basis review ‘whether or not’ any such speculation has ‘a foundation in the record.’ [Citations.]” (*Id.* at pp. 74-75.)

The purpose of the narcotics offender registration is “to deter recidivism by facilitating the apprehension of past offenders. [Citations.]” (*In re Luisa Z.* (2000) 78 Cal.App.4th 978, 983.) Defendant contends that “[t]here is no basis to presume that individuals convicted under section 11350, subdivision (a) are in greater need of supervision than those found in violation of section 11377, subdivision (a).”

We first note that the state was not required “to strike at all evils at the same time or in the same way.” (*Semler v. Oregon State Bd. of Dental Examiners* (1935) 294 U.S. 608, 610.) Moreover, as our high court has stated, “under the rational relationship standard, a court may not strike down a classification simply because the classification may be imperfect [citation] or because it may be ‘to some extent both underinclusive and overinclusive.’” (*Warden v. State Bar* (1999) 21 Cal.4th 628, 649, fn. 13, quoting *Vance v. Bradley* (1979) 440 U.S. 93, 108.) Here, the Legislature could have rationally determined that use of the controlled substances included in section 11350,

subdivision (a), which have been classified as narcotics and historically considered the most dangerous, were more highly addictive than those controlled substances included in section 11377, subdivision (a), and thus resulted in increased recidivism rates among users. The Legislature could have also rationally concluded that the use of controlled substances included in section 11350, subdivision (a) was far more prevalent in our society, and thus included these controlled substances in the classification requiring mandatory registration as a narcotics offender. Accordingly, we conclude that defendant has not been denied equal protection.

III. Disposition

The order is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

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